

Proper Steel Erectors, Inc. and its alter ego B & M Steel Erectors, Inc. and Iron Workers Upstate Locals of New York and Vicinity, Consisting of International Association of Bridge, Structural, Ornamental, and Reinforcing Iron Workers, Local Union Nos. 60, 33, 9, 440, 6 and 12. Case 3–CA–24700

February 8, 2008

SUPPLEMENTAL DECISION AND ORDER

BY MEMBERS LIEBMAN AND SCHAMBER

The General Counsel seeks default judgment in this case on the ground that the Respondent has failed to file an answer to the amended compliance specification. For the reasons that follow, we grant the motion in part and deny it in part.

On September 19, 2005, the Board issued a Decision and Order¹ that, among other things, ordered the Respondent to make whole both the bargaining unit employees and the benefit funds of the local unions for losses suffered as a result of the Respondent's violations of Section 8(a)(5) and (1) of the Act. On March 16, 2006, the United States Court of Appeals for the Second Circuit summarily enforced in full the Board's Order.

A controversy having arisen over the amount of backpay due discriminatees and contributions due the funds on December 15, 2006, the Regional Director issued a compliance specification and notice of hearing alleging the amounts due under the Board's Order, and notifying the Respondent that it should file a timely answer complying with the Board's Rules and Regulations. On January 5, 2007, the Respondent filed an answer. Subsequently, on March 2, 2007, the Regional Director issued an amendment to the compliance specification, and on March 26, 2007, the Regional Director issued an amended compliance specification and notice of hearing, again notifying the Respondent of its obligation to file an answer. Although properly served with copies of the amendment and amended compliance specifications, the Respondent failed to file an answer.

By letter dated April 19, 2007, sent through regular mail and facsimile, counsel for the General Counsel memorialized a telephone conversation with the Respondent's counsel, in which the Respondent's counsel was informed that no answer to the amended compliance specification had been received and that unless an appropriate answer was filed by April 23, 2007, default judgment would be sought. The Respondent's counsel acknowledged that he had received the amended compliance specification and that the Respondent did not an-

ticipate filing an answer. The Respondent did not thereafter file an answer.

On May 1, 2007, the General Counsel filed with the Board a Motion for Default Judgment, with exhibits attached. On May 7, 2007, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent again filed no response. The allegations in the motion are therefore undisputed.

On the entire record, the National Labor Relations Board² makes the following

Ruling on the Motion for Default Judgment

Section 102.56(a) of the Board's Rules and Regulations provides that the respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) provides that if the respondent fails to file an answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

According to the uncontroverted allegations of the motion for default judgment, the Respondent, despite having been advised of the filing requirements, has failed to file an answer to the amended specification. Because the Respondent has not shown good cause for its failure to file a timely answer, we grant the General Counsel's motion for default judgment, but only in part.

In the original compliance specification, the General Counsel alleged that the Respondent owed backpay for work performed on the following projects: Windham Ski Center, Jiminy Peak Ski Lodge, 20 Century Hill, 22 Century Hill, Cayuga Medical Center, and Faxton St. Luke Hospital. The specific amounts owed each employee were alleged in exhibits 2–24, which were attached to the compliance specification. The General Counsel also alleged that the Respondent owed contributions to various union benefit funds with regard to the above projects, as well as the Riverside Elementary School, Seneca County Correctional Facility, and Century Hill (Phase 1) projects, and set forth the alleged amounts owed in exhibits 26–30.

² Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Members Liebman and Schaumber constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act.

¹ 345 NLRB 906.

The Respondent filed an answer to the original compliance specification, admitting in part and denying in part the allegations. In paragraph 2 of the answer, the Respondent denied that any employee was owed backpay for work performed on the Century Hill Phase 1, Riverside Elementary School, or Seneca County Correctional Facility projects. However, the General Counsel did not allege, in either the original or amended compliance specification, that any backpay is owed for those projects. The Respondent did not contest any other backpay claims contained in the original specification.

With regard to the specification's claims for amounts owed to the funds, the Respondent admitted the amounts claimed for work performed on the Faxton St. Luke Hospital project. However, in paragraph 5 of its answer, the Respondent generally denied liability to the funds for work on other projects "for any hours . . . for which contributions were paid by other contractors out of monies that contractor [sic] owed to Proper Steel or B & M Steel." In paragraph 6, the Respondent denied liability to the union benefit funds for work performed on the Century Hill Phase 1 project, contending that "no such work was performed." In paragraphs 7 and 8, the Respondent denied liability to the funds for work performed on the Riverside Elementary School and Seneca County Correctional Facility projects "on the basis that these contributions were paid or have otherwise been settled with the funds." The Respondent either explicitly or implicitly admitted the other allegations of the specification, except for the total amounts claimed.

In the amended compliance specification, the General Counsel revised many of the original claims, abandoning some and recomputing others. With regard to the Seneca County and Century Hill Phase 1 projects, the General Counsel abandoned all claims for amounts owed to the benefit funds. With regard to the Riverside project, the abandonment of claims resulted in approximately a 75 percent reduction in the total amount allegedly owed to the funds. As stated above, the Respondent filed no answer to the amended compliance specification.

The Backpay Claims

The Respondent admitted all claims for backpay in the original compliance specification and failed to answer the amended specification. (The Respondent denied owing backpay for the Century Hill Phase 1, Riverside Elementary School, or Seneca County Correctional Facility projects, although neither the original nor the amended specification claimed backpay for those projects.) Because the Respondent has never denied any of the General Counsel's actual claims for backpay, we shall deem the backpay claims contained in the amended specifica-

tion to be admitted, and we shall grant the motion for default judgment with regard to those claims.

Claims for Amounts Owed to the Funds

As stated above, the Respondent has admitted the amounts claimed as owing the funds for work on the Faxton St. Luke project. Accordingly, we shall grant the General Counsel's motion for default judgment concerning those claims. The General Counsel has dropped from the amended specification all claims for amounts owing the funds arising out of the Century Hill Phase 1 and Seneca County projects. As for the remaining allegations, the Respondent in its answer to the original specification generally denied liability for any sums contributed to the funds by other contractors out of monies owed to the Respondent. The Respondent also denied all claims concerning contributions owed to the funds for the Riverside project, contending that those claims have either been paid or settled.³

Although the Respondent failed to answer the amended specification, the Board will not grant default judgment on an allegation denied in a timely-filed answer to a compliance specification, even though the respondent later fails to timely answer an amended specification repeating the allegation, provided that the repeated allegation is not substantively changed from the original. *Kolin Plumbing Corp.*, 337 NLRB 234, 235 (2001). Here, we find that the allegations in the amended specification regarding the amounts owed to the union benefit funds for work on the Riverside project were not substantively changed from those in the original: the General Counsel simply abandoned certain claims, leaving the others unchanged. And the changes in the amended specification do not affect the Respondent's contention that it should not be liable to the funds for any contributions made by other contractors with monies owed the Respondent—in effect, that the Respondent should not have to make the funds whole twice. Cf. *RFS Ecusta, Inc.*, 342 NLRB 920, 921 (2004) (finding no substantive change where original complaint alleging refusal to furnish information was amended to include the specific information that had been requested, but was not otherwise altered). In these circumstances, the Respondent may be excused from filing an amended answer that would have been unchanged from its initial answer. We shall therefore deny the General Counsel's request for default judgment as to the allegations concerning contributions to the funds (except those owed for the Faxton

³ The General Counsel does not contend that the Respondent's answers fail to conform to the Board's specificity requirements under Rule 102.56(b) and (c). Accordingly, that issue is not before us. *James Michael Shull*, 291 NLRB 342, 343 (1988).

St. Luke project), and we shall remand those portions of the proceeding to the Region for further appropriate action.

ORDER

The National Labor Relations Board orders that the General Counsel's motion for default judgment against the Respondent, Proper Steel Erectors, Inc. and its alter ego B & M Steel Erectors, Inc., Pompey and Central Square, New York, is granted insofar as it concerns all claims for backpay, and also the claims for amounts owed the industry benefit funds for work on the Faxton St. Luke Hospital project, contained in the General Counsel's amended compliance specification. The motion is otherwise denied.

It is ordered that the Respondent, its officers, agents, successors, and assigns, shall make whole the individuals listed in Attachment 1, by paying them a total amount of \$16,505.15, as set forth in attachment 1, plus interest as prescribed in *New Horizons for the Retarded*, 283 NLRB

1173 (1987), minus tax withholdings required by Federal and State laws. The Respondent shall also make whole the Local 440 benefit funds by paying them the amounts set forth in Attachment 2, totaling \$1,388.40, in the manner specified in the Board's underlying Decision and Order.

It is further ordered that this proceeding is remanded to the Regional Director for Region 3 for the purposes of issuing a notice of hearing and scheduling the hearing before an administrative law judge, for the limited purpose of taking evidence to determine the Respondent's liability for other contributions to union benefit funds.

It is further ordered that the administrative law judge shall prepare and serve on the parties a supplemental decision containing findings of fact, conclusions of law, and recommendations based on all of the record evidence. Following service of the administrative law judge's decision on the parties, the provisions of Section 102.46 of the Board's Rules shall be applicable.

ATTACHMENT 1

Proper Steel Erectors, Inc.
and B & M Steel Erectors, Inc.
Case 3-CA-24700

Backpay

	Local 12	Local 33	Local 60	Local 440	Backpay Total
1. Beckman, Duane	\$ 1,064.50	\$0.00	\$ 302.50		\$ 1,367.00
2. Beyea, Ray			0.00		-
3. Commer, Jacques	579.50		819.88		1,399.38
4. Dieffenbach, Trevor	2,136.50		677.00		2,813.50
5. Drury, Bruce		0.00			-
6. Dupree, Christopher	328.00				328.00
7. Gabriel, Raun	919.13		0.00		919.13
8. Jaconski, Vincent	891.50		691.88		1,583.38
9. Lazore, John	0.00		0.00		-
10. Lazore, Shawn	1,087.50	0.00	60.00		1,147.50
11. Lorete, Kevin		0.00			-
12. Lute, Russell	66.00		143.00		209.00
13. Moon, Ricky	58.00		44.00		102.00
14. O'Connor, John	801.00		28.00		829.00
15. Papineau, Kent			0.00		-
16. Scudo, Sean	598.75	0.00			598.75
17. Sendel, Frederick	508.00		751.63		1,259.63
18. Spencer, Ray				\$1,068.00	1,068.00
19. Spencer, Roger	84.00		52.00		136.00
20. Stone, Guy			0.00		-
21. Urbaniak, Shawn	836.63		0.00		836.63
22. Williams, Jason	148.00				148.00
23. Woodworth, Colin	1,110.25	0.00	650.00		1,750.25
TOTALS	\$11,217.26	-	\$4,219.89	\$1,068.00	\$16,505.15

ATTACHMENT 2

Local 440	Welfare	Pension	Medical	Annuity	App/train	Total
Quarter -04-1	\$444.00	\$565.20	\$61.20	\$318.00	\$0	\$1,388.40
Totals	\$444.00	\$565.20	\$61.20	\$318.00	\$0	\$1,388.40